

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



B5

DATE: **JUL 10 2012** OFFICE: TEXAS SERVICE CENTER



IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a college professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO affirmed the director's decision and dismissed the appeal on September 29, 2011.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the petitioner submits a copy of the same brief that he previously submitted on appeal, with the date changed from May 23, 2011 to October 20, 2011. The AAO, in its dismissal notice, discussed the assertions in that brief and found that the petitioner had not established eligibility for the benefit sought. The petitioner, on motion, does not acknowledge or rebut any of the AAO's findings. The petitioner essentially seeks reconsideration of the director's initial decision, not the AAO's subsequent appellate decision. Indeed, the petitioner states: "The attached brief, written as an appeal to the Administrative Appeals Office, is attached for reconsideration by the Texas Service Center."

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). The director denied the petition on April 28, 2010, some 18 months before the petitioner filed the motion to reconsider. The only decision issued within 30 days of the motion was the AAO's dismissal notice, which did not reset the clock for the petitioner to contest the director's initial decision. The petitioner makes no attempt to contest the AAO's decision, and the director lacks the authority to overturn a decision by the AAO. The AAO has appellate authority over the service centers, not *vice versa*.

The petitioner has not shown that the AAO's appellate decision was based on an incorrect application of law or Service policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the requirements of a motion to reconsider. As such, the regulation at 8 C.F.R. § 103.5(a)(4) requires the AAO to dismiss the motion.

**ORDER:** The motion is dismissed.